

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK**

Janelle Atkinson-Wignall,

Plaintiff,

v.

STATE UNIVERSITY OF NEW YORK AT
STONY BROOK a/k/a STONY BROOK
UNIVERSITY,

Defendant.

Case No. _____

COMPLAINT AND JURY DEMAND

COMES NOW the Plaintiff, Janelle Atkinson-Wignall, by and through her attorneys, and for her cause of action hereby states the following:

INTRODUCTION

1. Plaintiff Janelle Atkinson-Wignall (hereinafter “Plaintiff” or “Coach Atkinson”) brings this action against the State University of New York at Stony Brook, more commonly known as Stony Brook University (hereinafter “Defendant” or “SBU”), for damages, equitable and other relief, for gender discrimination and race discrimination in her employment in violation of her rights under state and federal law.

2. This action is brought under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000 et seq. (hereinafter “Title VII”) and the New York State Human Rights Law (hereinafter “NYSHRL”), N.Y. Exec. Law §§ 296 and 297 et seq.

3. Title VII and the NYSHRL protects employees from gender-based and race-based discrimination in the terms and conditions of their employment.

4. Female coaches at institutions across the nation are at a high risk of gender bias adversely affecting the terms and conditions of employment.

5. Female coaches of color are at an even higher risk of gender bias.

6. A female coach is judged differently and more harshly by her student athletes and their parents.

7. A female is expected to behave in a manner that is consistent with societal stereotypes about females. If she behaves in a stereotypically feminine manner, then she is blamed for being too soft as a coach. If she behaves the way we expect coaches to behave, then she is blamed for being too harsh. The double standards result in student-athlete complaints that are the direct result of gender bias. A university that relies, in whole or in part, upon complaints generated by bias or stereotypes is liable for gender discrimination.

8. Racial stereotypes exacerbate the risk to female coaches of color. A female coach of color who behaves the way we expect coaches to behave is even further misperceived, due to racial stereotypes, as being too harsh.

9. Universities also react and respond differently to student athletes based on their gender. They coddle and patronize female athletes, while ignoring or overlooking male athletes who raise complaints about legitimate concerns. This result is discriminatory based on gender and harms both male and female student athletes.

10. The result of these double standards put male athletes at risk (because their complaints are ignored) and place female coaches at risk (because they receive more complaints and are held to a higher standard).

11. Any of these biases and stereotypes—relying on biased student-athlete complaints against coaches, treating the complaints of female athletes differently than those by male athletes, or holding female coaches to double standards—are all forms of gender discrimination that violate the purpose and scope of Title VII and the NYSHRUL.

JURISDICTION AND VENUE

12. Jurisdiction is conferred on this Court by 28 U.S.C. §§ 1331 and 42 U.S.C. § 2000e-5(f)(3).

13. This Court has jurisdiction over all state law claims pursuant to 28 U.S.C. § 1367.

14. Venue exists in this Court, as the events giving rise to this lawsuit occurred in Stony Brook, Suffolk County, New York.

15. Coach Atkinson's discrimination charge against Defendant was dual filed on November 19, 2018, with the New York State Division of Human Rights and the Equal Employment Opportunity Commission.

16. The charge alleged, *inter alia*, that Defendant discriminated against her and terminated her employment due to her gender and race.

17. The EEOC issued a Notice of Right to Sue dated August 23, 2019. This action is being brought within 90 days from the issuance of the Notice of Right to Sue.

PARTIES

18. Plaintiff, a black woman of Jamaican descent, is a resident of Rocky Point, New York.

19. Coach Atkinson is a former employee of Defendant.

20. Defendant, SBU, is an institution of higher education located in Stony Brook, Suffolk County, New York.

STATEMENT OF FACTS

Initial Background

21. Prior to her career at SBU, Coach Atkinson was a highly successful competitive swimmer, two-time Olympian for Team Jamaica, and head coach of the Jamaican National Team at the 2009 Swimming World Championships.

22. Defendant employed Coach Atkinson as the head swimming and coach beginning in March 2017.

23. Prior to that, she had served as a college swimming coach for more than a decade.

24. Defendant hired Ms. Atkinson to rebuild its swimming program after the program had been suspended for 5 years while the university's swimming pool underwent extensive renovations.

25. The usual protocol for starting a program from scratch is to give the coach a full year to recruit a team.

26. This would have given Ms. Atkinson until September 2018 to recruit a full roster of swimmers ready and able to compete at the Division I level.

27. However, Defendant was eager to get the program up and running in time for the 2017–18 season, which began in the fall of 2017, because SBU would receive additional funding from the NCAA and the addition of a women's team would help reduce the degree to which SBU was out of compliance with Title IX.

28. NCAA standards call for a minimum of 11 swimmers on a team.

29. Ms. Atkinson worked diligently between March and September 2017, and she was able to secure 13 recruits.

30. Right before the 2017–18 academic year, one of those recruits was deemed academically ineligible to swim.

31. A second recruit decided she no longer wanted to attend SBU.

32. Two more young women joined the team to bring the roster back to 13.

33. One swimmer quit after the team's first practice and another quit shortly after once she realized the level of commitment required to swim at the Division I level.

34. Another swimmer quit after learning she would be academically ineligible until January 2018.

35. Many of the remaining swimmers were not the caliber of athlete that Coach Atkinson would have recruited had she been given sufficient time to put together a competitive roster for an NCAA Division I team.

36. Many of the remaining swimmers were not prepared for the level of commitment required of competition at the Division I level.

37. As a result, as the season progressed, several more student athletes left the team due to the time commitment. At least one of the student athletes who quit had pre-existing mental health concerns.

38. Throughout her tenure at SBU, Coach Atkinson was repeatedly told by Athletic Director Shawn Heilbron that SBU understood Coach Atkinson would need time to build the program; that most of the current roster of swimmers were not of the caliber necessary to make the program competitive; and that Coach Atkinson would not be held to high performance standards for at least the first 3–5 years while she built the program from scratch.

Lack of Institutional Support

39. Throughout her tenure, SBU administrators failed to give Coach Atkinson the same degree of respect and control over her team as they did male coaches.

40. In approximately November 2017, Coach Atkinson had a meeting with Student Athlete A, who Coach Atkinson was considering cutting from the team because Student Athlete A was not keeping up with practices and was not performing at a high enough level to be competitive.

41. During the meeting, Student Athlete A informed Coach Atkinson that she needed to return home for a funeral and specified the practices she would miss.

42. Student Athlete A missed two additional practices without informing Coach Atkinson of her intention to be absent.

43. Coach Atkinson pulled Student Athlete A aside and explained that her lack of communication was not acceptable. She explained that Student Athlete A's overall lack of communication and absences from many practices suggested that she was not prepared for the rigors of a Division I program. Coach Atkinson suggested that a club team might be better suited to Student Athlete A's commitment and skill level.

44. Student Athlete A told Coach Atkinson she would think on it and left the meeting.

45. The following day, Associate Athletic Director Stephen Clacherty pulled Coach Atkinson into a meeting with himself and Student Athlete A.

46. At that meeting, Coach Atkinson learned that Student Athlete A had left the previous day's meeting and told AAD Clacherty that Coach Atkinson had kicked her off the team.

47. Coach Atkinson explained that Student Athlete A had not been kicked off the team; rather, she had suggested that a club team may be more appropriate.

48. Student Athlete A informed Coach Atkinson and AAD Clacherty that she did not want to compete with a club team, but wanted to remain on the varsity team.

49. Coach Atkinson told Student Athlete A that she could remain on the team and that she would be entered into the upcoming meet if Student Athlete A practiced with the club team and kept in communication. AAD Clacherty was present throughout this meeting.

50. Some of the club team's practices were cancelled and Student Athlete A failed to make up for the cancelled practices.

51. The day before the meet, she failed to show up for a practice scheduled by Coach Atkinson and did not communicate with Coach Atkinson about the absence.

52. Because Student Athlete A had hardly swum at all in the last month (and competing while out of shape posed a significant safety risk), and had again failed to communicate, Coach Atkinson did not enter Student Athlete A into the meet.

53. When Student Athlete A arrived at the meet, after not having been in contact at all with Coach Atkinson, she was upset to learn that she had not been entered into the meet.

54. Student Athlete A walked away and then returned and handed her phone to Coach Atkinson.

55. AAD Clacherty was on the phone and started screaming at Coach Atkinson for not entering Student Athlete A into the meet.

56. Coach Atkinson remained calm and explained why the swimmer had not been entered.

57. AAD Clacherty continued yelling at Coach Atkinson, even after she acquiesced and agreed to enter Student Athlete A into the meet.

58. The following Monday, AAD Clacherty texted Coach Atkinson requesting a meeting to continue their "conversation" from the previous Friday (the day of the meet).

59. Still shaken from AAD Clacherty's aggressive behavior toward her on Friday, Coach Atkinson requested to have someone else present at the meeting.

60. AAD Clacherty repeatedly resisted having someone else present.

61. Eventually, AAD Clacherty relented and a meeting was held with Coach Atkinson, AAD Clacherty, AD Heilbron, and Assistant Coach Jordan Bowen.

62. AAD Clacherty's behavior toward Coach Atkinson was markedly different, and more appropriate, during this meeting.

63. During the meeting, AD Heilbron asked what Coach Atkinson needed to help improve team morale and build the program.

64. Coach Atkinson explained that she had tried numerous things already (team meetings with sports psychologists, team building exercises, motivational exercises, etc...) and asked if they had any other suggestions.

65. She was told they did not have any other suggestions, that she had done all she could do, and that she just needed to get through the year until she recruit higher-level swimmers.

66. Coach Atkinson asked AD Heilbron to meet with the team so the team understood that administration supported her and they understood that Coach Atkinson was not the only one who expected them to attend practices, communicate, push themselves to perform at their highest level, etc...

67. AD Heilbron declined to do this and instead had members of the women's lacrosse team meet with the team.

68. Following that meeting, the lacrosse members informed AD Heilbron that they felt bad for the swim team coaches because the swimmers did not appreciate the rigors of Division I competition.

69. Coach Atkinson was not given the same institutional support as male coaches and coaches of men's teams.

70. To Coach Atkinson's knowledge, male and/or white coaches were permitted to make their own decisions about who to play in a competition and who should be cut from a team.

71. Coach Atkinson is aware of male and/or white coaches who received complaints from student athletes who were upset about the amount of their playing time.

72. AD Heilbron told Coach Atkinson these complaints were common and that administration did not get involved in those decisions, as they were up to the coach.

73. Meanwhile, Coach Atkinson was micromanaged in administration of her team in ways male and/or white coaches and coaches of men's teams were not.

Student-Athlete Complaints

74. In December 2017, Student Athlete A was still not progressing and I proposed to AAD Clacherty that we implement a standard requiring an athlete to be in the top 80% in the conference standing in order to be entered into a meet.

75. AAD Clacherty agreed, given that it was not financially efficient to take an athlete to a meet if the athlete would not be competitive. He suggested Coach Atkinson meet with Student Athlete A to explain the standard and expectations.

76. Coach Atkinson and Assistant Coach Bowen met with Student Athlete A and also asked Student Athlete A to send them an e-mail summarizing the conversation to ensure Student Athlete A understood the expectations. Student Athlete A did send the email accurately summarizing the expectations.

77. In early January 2018, Student Athlete A had a phone conference with AD Heilbron and AAD Clacherty and informed them that she was quitting the team.

78. AAD Heilbron and AAD Clacherty asked Student Athlete A if there was any specific reason she was quitting. Student Athlete A said there was not and ended the phone call.

79. The next day, Student Athlete A sent an e-mail to AD Heilbron, AAD Clacherty, SBU President Samuel Stanley, the coaching staff, and others accusing Coach Atkinson of abusive behavior, ignoring or downplaying the mental health concerns of student athletes, and ignoring or downplaying student-athlete injuries.

80. Coach Atkinson called AD Heilbron, who told her that they would conduct an investigation and asked her to compile documentation so he could provide it to President Stanley. Coach Atkinson did this.

81. On January 20, 2018, Coach Atkinson learned that the mother of Student Athlete B had sent an e-mail to administration accusing Coach Atkinson of abusive behavior.

82. That same day, Coach Atkinson's volunteer coach informed her that he had been interviewed by the investigator.

83. The volunteer coach informed Coach Atkinson that he had told the investigator what had actually happened, explained the difficulties coaching staff was having with Student Athlete A, Student Athlete B, and Student Athlete B's mother.

84. The volunteer coach said the investigator seemed unwilling to listen to his explanation and then asked the volunteer coach to sign a statement that grossly mischaracterized his conversation with the investigator.

85. Assistant Coach Bowen was supposed to be interviewed on January 26, 2018; however, that meeting was later abruptly cancelled.

86. Instead, on January 26, 2018, AD Heilbron called me in for a meeting and terminated Coach Atkinson's employment.

87. Neither Coach Atkinson nor Assistant Coach Bowen were interviewed as part of the investigation.

88. All of the allegations against Coach Atkinson were demonstrably false in that administration

- a. Knew the allegations to be false based on their previous interactions with Student Athlete A, Student Athlete B, and Student Athlete B's mother; and/or
- b. Knew the allegations to be false because some of the allegations concerned alleged behavior was inconsistent with Coach Atkinson's behavior witnessed first-hand by administrators; and/or
- c. Coach Atkinson's documentation proved some of the allegations could not have been true; and/or
- d. A thorough and unbiased investigation would have revealed the remaining allegations to be false.

89. SBU failed to conduct a thorough and unbiased investigation.

90. The allegations were the result of gender stereotypes affecting female coaches, and especially female coaches of color.

91. In particular, the allegations accused Coach Atkinson of abusive behavior even though Coach Atkinson's behavior was always well within acceptable and standard coaching behavior.

92. However, behavior that is acknowledge to be acceptable and standard for male coaches is often perceived as unacceptable for female coaches, especially female coaches of color.

93. AD Heilbron, AAD Clacherty, and others had attended many of the swim team's practices and could observe first-hand that Coach Atkinson's behavior was objectively acceptable and standard.

94. Coach Atkinson is aware of other (male and/or white) coaches who received student-athlete complaints and these coaches informed Coach Atkinson that administration had always supported them as coaches against these complaints.

95. SBU's overreaction to the complaints, failure to properly investigate them, and insistence on giving them validity despite objective evidence to the contrary empowered the biased complaints.

96. The failure to properly investigate also evidences that gender and race was a contributing and/or motivating factor in the decision to terminate Coach Atkinson.

COUNT I

Gender Discrimination in Violation of Title VII and the NYSHRL

97. Coach Atkinson re-alleges paragraphs 1 through ___ as if fully set forth herein.

98. Coach Atkinson has satisfied all conditions precedent for bringing suit under Title VII and the NYSHRL on these claims.

99. Under the provisions of both Title VII and the NYSHRL, it is unlawful for an employer to discriminate against an employee on the basis of sex.

100. At all material times, Defendant was an "employer" within the meaning of Title VII and the NYSHRL.

101. Defendant's conduct was discriminatory against Coach Atkinson with respect to failing to treat her equally to male coaches, holding her to different and higher standards.

102. Defendant discriminated against Coach Atkinson on the basis of gender in violation of Title VII and the NYSHRL by holding her to a different standard than similarly-situated men in the terms and conditions of her employment including but not limited to:

- a. The oversight and management of her team,
- b. The institutional support provided to her;

- c. How she coached her players,
- d. In the evaluation of player complaints, and
- e. By firing her.

103. On information and belief, in discriminating against Coach Atkinson, Defendant acted with malice or in reckless disregard of Coach Atkinson's rights.

104. As a result of Defendant's conduct, Coach Atkinson suffered loss of employment, loss of wages and benefits, emotional pain and suffering, humiliation, embarrassment, inconvenience, damage to her reputation, loss of career, and out of pocket expenses.

105. The actions of Defendant also require the imposition of specific equitable and injunctive relief necessary to enforce the mandates of Title VII the NYSHRL including, but not limited to:

- a. reinstatement of Plaintiff to her position as head coach, or front pay;
- b. training for the coaches and staff of the athletic department on discrimination, with a special emphasis on race and gender;
- c. training on race and gender bias for current and incoming student athletes and their parents; and
- d. such other and further relief as the Court deems necessary to effectuate the purpose of Title VII and the NYSHRL.

WHEREFORE, Coach Atkinson requests reinstatement; lost wages and benefits; compensatory damages for loss of employment, loss of wages and benefits, emotional pain and suffering, humiliation, embarrassment, inconvenient and damage to her reputation, and out-of-pocket expenses; punitive damages, equitable relief; any other relief the Court deems just and necessary to make Plaintiff whole and effectuate the purpose of Title VII and the NYSHRL;

prejudgment and post-judgment interest as allowed by law; attorneys' fees; expert witness fees; and costs.

COUNT II

Race Discrimination in Violation of Title VII and the NYSHRL

1. Coach Atkinson re-alleges paragraphs 1 through ___ as if fully set forth herein.
2. Coach Atkinson has satisfied all conditions precedent for bringing suit under Title VII and the NYSHRL on these claim.
3. Under the provisions of both Title VII and the NYSHRL, it is unlawful for an employer to discriminate against an employee on the basis of race.
4. At all material times, Defendant was an "employer" within the meaning of Title VII and the NYSHRL.
5. Defendant's conduct was discriminatory against Coach Atkinson with respect to failing to treat her equally to white coaches, holding her to different and higher standards than white coaches.
6. Defendant discriminated against Coach Atkinson on the basis of race in violation of Title VII and the NYSHRL by holding her to a different standard than similarly-situated white coaches in the terms and conditions of her employment including but not limited to:
 - a. The oversight and management of her team,
 - b. The institutional support provided to her;
 - c. How she coached her players,
 - d. In the evaluation of player complaints, and
 - e. By firing her.
7. On information and belief, in discriminating against Coach Atkinson, Defendant acted with malice or in reckless disregard of Coach Atkinson's rights.

8. As a result of Defendant's conduct, Coach Atkinson suffered loss of employment, loss of wages and benefits, emotional pain and suffering, humiliation, embarrassment, inconvenience, damage to her reputation, loss of career, and out of pocket expenses.

9. The actions of Defendant also require the imposition of specific equitable and injunctive relief necessary to enforce the mandates of Title VII the NYSHRL including, but not limited to:

- a. reinstatement of Plaintiff to her position as head coach, or front pay;
- b. training for the coaches and staff of the athletic department on discrimination, with a special emphasis on race and gender;
- c. training on race and gender bias for current and incoming student athletes and their parents; and
- d. such other and further relief as the Court deems necessary to effectuate the purpose of Title VII and the NYSHRL.

WHEREFORE, Coach Atkinson requests reinstatement; lost wages and benefits; compensatory damages for loss of employment, loss of wages and benefits, emotional pain and suffering, humiliation, embarrassment, inconvenient and damage to her reputation, and out-of-pocket expenses; punitive damages, equitable relief; any other relief the Court deems just and necessary to make Plaintiff whole and effectuate the purpose of Title VII and the NYSHRL; prejudgment and post-judgment interest as allowed by law; attorneys' fees; expert witness fees; and costs.

JURY DEMAND

COMES NOW the Plaintiff, Janelle Atkinson-Wignall, and hereby requests a trial by jury in the above-captioned matter.

/s/ Phillip G. Steck

Phillip G. Steck
Cooper Erving & Savage LLP
steck@cooperirving.com
39 N. Pearl Street
Albany, NY 12207
Ph: (518) 449-3900
Fax: (518) 432-3111

Thomas Newkirk
tnewkirk@newkirklaw.com
Jill Zwagerman
jzwagerman@newkirklaw.com
Danya Keller
dkeller@newkirklaw.com
NEWKIRK ZWAGERMAN, P.L.C.
521 East Locust Street, Suite 300
Des Moines, IA 50309
Telephone: (515) 883-2000
Fax: (515) 883-2004

ATTORNEYS FOR PLAINTIFF

Original filed.